

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863

**Th8b**

Filed: 09/11/02  
49th day: 10/30/02  
49 Day Waiver: 09/19/02  
180 Day: 03/10/03  
Staff: SAM- SC  
Staff report: 11/21/02  
Hearing date: 12/12/02

## STAFF REPORT: APPEAL

### SUBSTANTIAL ISSUE DETERMINATION/DENovo FINDINGS

**Local government:** .....Monterey County

**Local Decision:** .....Resolution 02-252 (PC96036) Approved with conditions June 4, 2002 by the Monterey County Board of Supervisors (See Exhibit E).

**Appeal Number** .....A-3-MCO-02-077

**Applicant**.....Dorothy Gorman-Mullins

**Appellants:**.....Commissioners Sara Wan and John Woolley.

**Project location**.....274 Paradise Road (East side of Paradise Rd. near Lake View Drive) (APN 129-096-029) in Prunedale, North County Planning Area (Monterey County) (See Exhibits A & B).

**Project description** .....Allow minor land division of a 17.03-acre parcel into six parcels; grading and water system facilities; allow development on slopes greater than 25%; removal of 68 Coast Live oaks, and “rezone” the parcel from a “LDR-B-7(CZ)” to LDR, and then to “LDR-B-6(CZ)”.

**File documents**.....County coastal permit file PC96036; Monterey County Board of Supervisors Resolution # 02-252; Monterey County Local Coastal Program, including *North County Land Use Plan* and *Monterey County Coastal Implementation Plan*.

**Staff recommendation** ...**Project raises a Substantial Issue; denial of *de novo* permit application.**

### Summary of Staff Recommendation:

The project is located in the North County planning area of Monterey County (project vicinity and site location maps are shown in Exhibits A and B, respectively). The applicant proposes to subdivide a 17.03-acre parcel into 6 parcels, grade and develop on slopes exceeding 25%, install a water system facility consisting of an additional well on each parcel and to remove 68 Coast Live oaks. The project includes removal of restrictive overlay zoning (LDR-B-7) prohibiting subdivisions except for limited circumstances, subdivision of the lot under the LDR zone district regulations, and then the placement of



**California Coastal Commission**  
**December 12, 2002 Meeting in San Francisco**

Staff: SAM Approved by:

C:\DOCUME~1\mfrum\LOCALS~1\Temp\A-3-MCO-02-077 (Gorman Subdivision) SI DN strpt 11.21.02.doc

different restrictive overlay (LDR-B-6) prohibiting future subdivisions under any circumstance onto the parcels.

Staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeal has been filed, and that the coastal development permit be **denied** due to the project's inconsistencies with the LCP, described herein. The project presents both a significant procedural issue an LCP amendment from the Coastal Commission is required to change the zoning for the project and thus, the project is per se inconsistent with the LCP; and significant substantive issues relevant to ESHA protection, water supply and water quality.

#### Procedural Issue

Subdivision of this parcel is inconsistent with the current LDR-B-7(CZ) zoning. The LCP contains zoning districts that restrict subdivision of land in areas with environmental constraints, such as lack of water. "B-7" overlay zones cannot be subdivided until the property is rezoned. Although the LCP permits the placing of these restrictive zoning overlays on parcels without Coastal Commission approval, the removal of such restrictions is not allowed without an amendment to the LCP. To be considered for reclassification from LDR-B-7 to LDR (A zoning district that allows subdivision), the applicant must demonstrate through the LCP amendment review process that he has met minimum requirements with respect to water supply, drainage and traffic circulation among other constraints. No LCP amendment for this project has been submitted, nor has any analysis of substantive issues been completed.

#### Substantive Issues

Even if the LCP had been amended to allow removal of the B-7 Overlay prior to the approval of the subdivision application, other substantive inconsistencies with LCP policies arise, including questions concerning the adequacy of the water supply to support development, and inconsistency with environmentally sensitive habitat areas (ESHA) and erosion control policies designed to protect water quality and reduce hazards. These substantive issues need to be thoroughly evaluated prior to the submission of an LCP amendment to the Coastal Commission for certification.

Currently the parcel contains a large amount of maritime chaparral, a plant community classified as ESHA by the LCP. Although the subdivision does not create lots consisting entirely of ESHA, each proposed lot has ESHA on it. The LCP requires protection of ESHA, among other ways, by prohibiting non-resource dependent development in ESHA, limiting the amount of vegetation and land that can be disturbed, and requiring deed restrictions or permanent conservation easements over ESHA. The project is inconsistent with these requirements because it allows non-resource dependent residential development and an access road in ESHA; because it allows for substantial vegetation removal; and because it does not protect all ESHA on site with a conservation easement or deed restriction.

The project is located within an area of the North County Planning area that has been documented to have a serious groundwater overdraft problem, which contributes to saltwater intrusion and lowering of the water table. In areas of limited water supply, the LCP gives certain land uses, such as coastal



dependent uses and recreation and agriculture, priority for water over other uses, such as residential use. This project was approved without benefit of a site-specific hydrology report, and there has been no submission of proof of an adequate long-term water supply.

Additionally, the project is located in an area of North County subject to high erosion hazards based on the occurrence of steep slopes and erodible soils, which is exacerbated by removal of vegetation. The LCP protects lands in critical erosion hazard areas by requiring new development to minimize alteration to natural landforms, to have erosion control plans and retain the maximum amount of natural vegetation, and to place lands in critical erosion areas under a conservation easement. The LCP also protects critical erosion areas by limiting densities in such areas. This project is inconsistent with these requirements because natural vegetation would not be retained to the maximum extent possible, the development is not clustered in areas of non-critical erosion, and because no easement was required to protect the critical erosion areas of the property. This project is also inconsistent because it increases the density on a parcel that is within an area subject to Critical Erosion Area policies, which the County did not analyze.

## Staff Report Contents

Summary of Staff Recommendation:	1
I. Local Government Action	4
II. Summary of Appellants' Contentions	4
III. Standard of Review for Appeals	5
IV. Staff Recommendation on Substantial Issue	5
V. Staff Recommendation on De Novo Permit	6
VI. Recommended Findings and Declarations	6
A. Project Description and Location	6
B. Analysis of Appeal Issues	7
1. Subdivision is Inconsistent with Current Zoning	7
A. Appellant's Contentions	7
B. Local Coastal Program Provisions	7
C. Local Government Action	8
D. Substantial Issue Analysis and Conclusion	9
2. Water Supply	11
A. Appellants' Contentions	11
B. Local Coastal Program Provisions	11
C. Local Government Action	13
D. Substantial Issue Analysis and Conclusion	13
3. Environmentally Sensitive Habitat Resources	16
A. Appellants' Contentions	16
B. Local Coastal Program Provisions	16
C. Local Government Action	18
D. Substantial Issue Analysis and Conclusion	18



4. High Erosion Hazard Areas .....	20
A. Appellants' Contentions.....	20
B. Local Coastal Program Provisions.....	20
C. Local Government Action.....	21
D. Substantial Issue Analysis and Conclusion.....	21
C. Substantial Issue Analysis- Conclusion .....	22
D. De Novo Coastal Permit Findings .....	22
1. High Erosion Hazard Areas .....	24
A. Local Coastal Program Provisions .....	24
B. Issue Analysis and Conclusion.....	26
E. California Environmental Quality Act (CEQA).....	27
IV. Exhibits	
A. Regional Location Map	
B. Project Vicinity Map	
C. Proposed Tentative Parcel Map	
D. Original Tentative Parcel Map	
E. Final Local Action from Monterey County Board of Supervisors, Resolution #02-252 Findings and Conditions.	
F. Appellant's Contentions	
G. Map of North County Hydrogeologic Study Area	
H. Map of Critical Erosion Areas	

## I. Local Government Action

The Monterey County Board of Supervisors approved a proposal for subdivision and rezoning of this parcel on June 4, 2002, the final Resolution that was received in the District office on August 27, 2002 (Resolution #02-252, Exhibit E). The proposed project involves the subdivision of a 17.03-acre parcel into six parcels; grading and water system facilities; a waiver of the policy prohibiting development on slopes greater than 25%, and removal of 68 Coast Live oak trees. As described by the County, the project also purports to rezone the property through removal of the B-7 overlay to the LDR zone district to allow the land division, and then applying a B-6 overlay that precludes future subdivisions.

County approval of the project includes adoption of a Mitigated Negative Declaration and Mitigation Monitoring Plan, and approval of a Coastal Development Permit and the waiver to allow development on slopes greater than 25% (PC96036), subject to 78 special conditions of approval. All permit findings and conditions are included in Exhibit E.

## II. Summary of Appellants' Contentions

The appellants have appealed the final action taken by the Monterey County Board of Supervisors



(Resolution 02-252), asserting that approval of the project is inconsistent with policies of the Monterey County Local Coastal Plan. The appellants contend that the project is procedurally inconsistent with the LCP because an amendment is required to change the zoning of this parcel, and no such LCP amendment was obtained from the Coastal Commission to allow the subdivision. The appellants also contend that the project has not adequately addressed the substantive issues of the region's limited water supply; the presence of Environmentally Sensitive Habitat Areas (ESHA), and the LCP's Critical Erosion Area policies. The complete text of the appellants' contentions can be found in Exhibit F.

### III. Standard of Review for Appeals

The grounds for appeal to the California Coastal Commission under section 30603 of the California Coastal Act are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program and the public access policies of the Coastal Act if the project is located between the first public road and the sea. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. This project is appealable because Section 30603(a)(4) allows for appeals of any development approved by a coastal county that is not designated as the principle permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500). Subdivisions are listed as conditional uses in the LDR zone district and are not permitted at all in the "LDR-B-7" district.

### IV. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

**MOTION:** Staff recommends a "NO" vote on the following motion:

**"I move that the Commission determine that Appeal No A-3-MCO-02-077 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.**

**STAFF RECOMMENDATION:**

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an



affirmative vote of the majority of the appointed Commissioners present.

**RESOLUTION:**

The Commission hereby finds that Appeal No. A-3-MCO-02-077 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

## V. Staff Recommendation on De Novo Permit

The staff recommends that the Commission, after public hearing **deny** the coastal development permit.

**MOTION:** Staff recommends a “**NO**” vote on the following motion:

**“I move that the Commission approve Coastal Development Permit No. A-3-MCO-02-077 for the development as proposed by the applicant.”**

**STAFF RECOMMENDATION OF DENIAL:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION:**

The Commission hereby **denies** a permit for the proposed development as conditioned below, on the grounds that the development does not conform to the policies of the Monterey County certified Local Coastal Program. Approval of the permit will not comply with the California Environmental Quality Act (CEQA) because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

## VI. Recommended Findings and Declarations

The Commission finds and declares as follows:

### A. Project Description and Location

The project consists of a subdivision of a 17.03-acre lot into 6 parcels ranging from 1.59 to 5.0 acres in size; grading and water system facilities (i.e. individual wells); a waiver of policy prohibiting development on slopes greater than 25%, and removal of 68 Coast Live oaks. However, the parcel to be



subdivided has a zoning overlay that prohibits subdivision of those properties unable to meet minimum requirements with respect to limiting factors such as water supply, and traffic circulation. Demonstration that these constraints have been removed, through an LCP amendment certified by the Coastal Commission, is required in order to eliminate the “B-7” overlay and thus allow subdivision. Without addressing the LCP requirement, the County approval of this project also includes removal of the “B-7” zoning overlay restriction, rezoning to LDR to allow the division, and application of the stricter “B-6” zoning overlay to the new parcels. The parcel currently has an existing single-family home of 1,072 square feet and some associated outbuildings, including a barn, a shed and a detached garage, which would remain within proposed Lot 1, fronting on Paradise Road. Proposed Lots 2-6 would be located behind the existing residences on the eastern portion of the property and would be sold for residential development.

The project is located in North Monterey County roughly 2 miles east of Elkhorn Slough, and on the eastern side of Paradise Road near Lake View Drive. The project is also located within LUP-designated Subwatershed No. 29, a Watershed Restoration Area, and within the boundaries of the North County Hydrological Study Area, which has been determined to have groundwater overdraft and saltwater intrusion issues. The project also lies in a region with pockets of high erosion hazards (See Exhibit H). The surrounding parcels are mostly in residential use, and primarily zoned for Low Density Residential (Minimum parcel size of 1 acre) and Rural Density Residential (Minimum parcel size of 5 acres) use. This area of Monterey County, and the project site in particular, has a high concentration of maritime chaparral, which is considered an environmentally sensitive habitat by the North County Land Use Plan.

## B. Analysis of Appeal Issues

### 1. Subdivision is Inconsistent with Current Zoning.

#### A. Appellant’s Contentions

The appellants contend in part that: “Because the County cannot remove the “B-7” overlay from this lot without an LCP amendment, the proposed subdivision is inconsistent with the current zoning”, and that the project on appeal is inconsistent with the Certified LCP for the following reasons (See Exhibit F for complete text of appellants’ contentions):

- The B-7 overlay does not allow any land division.
- Allowable density of any proposed subdivision must be based on an evaluation of site conditions and cumulative impacts.
- Removal of the “B-7” overlay, rezoning to LDR without the overlay, and placement of “B-6” zoning overlay requires an LCP amendment from the Coastal Commission.

#### B. Local Coastal Program Provisions

The appellants cite the following North County Land Use Plan (LUP) and Coastal Implementation Plan



(CIP) policies:

- **CIP Section 20.42.030.G.1** (Relevant Portion of B-7 Overlay Restriction) *The lots as shown on the recorded Final Map or Parcel Map may not be further subdivided unless the lots are first reclassified from the “B-7” district. Lot line adjustments may be allowed...*
- **CIP Section 20.144.140.B.3.d.1** *Densities of residential subdivisions shall be based upon an evaluation of the site conditions and the development’s cumulative impacts. As such, the maximum allowable density based on the evaluation shall be determined pursuant to Section 20.140.070. Factors to be considered include: geologic/flood/fire hazards, slope, vegetation, environmentally sensitive habitats, water quality and availability, erosion, septic tank suitability, adjacent land use compatibility, public services availability, and coastal access and visual resource opportunities and constraints. (Ref. Policy 4.3.6.D.1)*

The following policies are also relevant:

- **CIP Section 20.42.030.G.3** *Reclassification from “B-7” zoning to allow further subdivision may be considered when the applicant demonstrates to the satisfaction of the Board of Supervisors that he has met minimum requirements in respect to water supply, drainage, sewage disposal, parcel size and design, and traffic circulation for the total area included in the “B-7” district, created as a result of the subdivision of which the lot is a part. Upon application for a land division, the applicant shall provide appropriate copies illustrating the aforementioned information.*
- **CIP Section 20.94.042** *Zoning Changes and Amendments **Not Subject to California Coastal Commission Certification:** Zoning designation reclassifications constituting an amendment to this Title and initiated for the purpose of preserving or enhancing the coastal resources including **adding** any “B”, “A”, “HR”, “Z” overlay zoning designations shall not require certification by the California Coastal Commission (Emphasis added).*

### C. Local Government Action

Finding number 1 of the County’s action (Resolution 02-252, Exhibit E) addresses zoning and density suitability, it states (Exhibit E, Page 2) that the parcel is zoned “LDR/B-7 (CZ)” and is consistent with the plans policies, requirements and standards of the LUP, specifically Coastal Implementation Plan (CIP) Chapter 20.42 governing “B” districts in the County’s Zoning Ordinance. Evidence listed in support of this finding states that there is no indication from the Planning and Building Inspection Department, Water Resources Agency, Public Works Department, Environmental Health Department and the North County Fire Protection District that the site is not suitable for the proposed development. Additional evidence goes on to state that the site is “physically suitable for the proposed density of the development” and that the project will result in a gross density of 2.83 acres per unit, and that the applicant has demonstrated “adequate water supply, drainage, sewage disposal, parcel size and design, and traffic circulation”.

In addition to findings and evidence, the project was conditioned, among other things, to provide the Water Resources Agency a “water balance analysis describing the pre-development and post-





development water use on the property”, to submit a drainage report and to obtain a amended water system permit from the Division of Environmental Health, however, no substantive findings were made with respect to water use, density or the “rezoning”.

## **D. Substantial Issue Analysis and Conclusion**

### **1) History of the Property**

The Gorman property was originally a 25.53-acre parcel, which was split into two parcels in 1980. Subsequent to that 1980 subdivision, the B-7 overlay was placed on the zoning designation for each new parcel, one being 8.5 acres, and the other being the 17.03 subject parcel. At that time the owner received approval from Monterey County for a four-lot subdivision, but not from the Coastal Commission, which was generally not approving land divisions in the Moro Cojo watershed due to cumulative impact overdraft of groundwater and concerns about cumulative impacts prior to completion of the LCP. However, a two-lot subdivision was approved because two houses already existed on the parcel, one on each of the proposed lots (Coastal Permit P-80-272, Gorman).<sup>1</sup>

In 1992, the 8.5-acre policy was again considered for a subdivision into three lots. Because of the B-7 overlay, the applicant, pursuant to the LCP, approached the Board of Supervisors for an LCP amendment. After review of the impacts on water supply, sewage disposal and traffic impacts, the Board was satisfied that the criteria of CIP Section 20.42.030.G.3 had been met, and submitted the amendment to the Coastal Commission for certification. After review by the Coastal Commission, Monterey County LCP Amendment No. 1-92 #2 was continued to allow the County to conduct additional analysis to show conformance with the certified LUP.

Monterey County LCP No. 1-93 #5 was subsequently approved to replace 1-93 #2, based on the additional analysis of density and cumulative impacts to the water supply. With respect to the groundwater overdraft, the subdivision proposal was assessed a water impact fee to help fund a study concerning the question of continuing groundwater overdraft, which has since been completed. Interestingly, the current project as approved by the County also includes a condition of approval requiring the applicant to pay a fee for the same “area-wide hydrological study to address groundwater overdraft and water resources in the project area” (See Exhibit E, Condition 12, Page 14). Additionally, the County prepared an LCP amendment to update the North County Area LUP to address the 50% buildout figure. The revised LUP policies would apply the resource and infrastructure constraint policies on a sub-basin/sub-watershed basis rather than to the entire planning area segment.<sup>2</sup> However, this LCP amendment was never completed and submitted to the Coastal Commission for certification.

### **2) The Subdivision is Inconsistent with Current Zoning**

The project site is currently zoned “LDR-B-7(CZ), which, subject to CIP Section 20.42.030.G.1, may be subdivided only if the “B-7” district is removed through an LCP amendment. The “B-7” overlay

---

<sup>1</sup> Approved findings from Monterey County LCP Amendment No. 1-93 #5.

<sup>2</sup> Approved findings from Monterey County LCP Amendment No. 1-93 #5.



specifically allows removal of the “B-7” designation and thus subdivision of the property if the owner can adequately demonstrate that the subdivision complies with CIP Section 20.42.030.G.3. This ordinance requires the applicant to demonstrate to the Board of Supervisors that he has met the minimum requirements with respect to the limiting factors of “water supply, drainage, sewage disposal, parcel size and design, and traffic circulation” for the entire parcel. Once the applicant has demonstrated that the minimum requirements have been met, Section 20.42.030.G.3 states “further subdivision may be considered”.

If the Board of Supervisors determines that subdivision of this parcel meets the minimum requirements for consideration of subdivision under 20.42.030.G.3, the allowable density of the subdivision must then be based on an evaluation of the site conditions and cumulative impacts as required by CIP Section 20.144.140.B.3.d.1. This Section of the CIP requires densities of residential subdivisions to be based on “an evaluation of the site conditions and the development’s cumulative impacts.” The Section lists factors to be considered, including water availability and quality, vegetation and environmentally sensitive habitats, and slope and erosion among others. This project is inconsistent with CIP Section 20.144.140.B.3.d.1 because these cumulative effects, coupled with the direct effects, have not been adequately evaluated, as evidenced by the lack of a site-specific hydrology report or a traffic study, and thus the subdivision density has not been determined in conformance with the LCP. Therefore, the Commission finds that subdivision of the project site is inconsistent with zoning ordinances 20.42.030.G.1 and 20.42.030.G.3, and thus the certified LCP. Therefore, the Commission finds that a substantial issue is raised with respect to allowing development inconsistent with current zoning of a parcel.

### 3) Removal of the B-7 Overlay Requires an LCP Amendment

The LCP provides for limited revisions to the “B” overlays, including the addition of such an overlay without certification by the Coastal Commission. CIP Section 20.94.042 allows addition of a “B” overlay specifically for the **purpose of preserving or enhancing coastal resources** without certification by the Coastal Commission. This section was designed with the intent to make it easier for the County to protect coastal resources through the imposition of more restrictive zoning in order to prevent the premature or inappropriate subdivision of certain lots. Because the intent of the zoning change, as specified in this Section, is “**preserving or enhancing**” coastal resources, certification of the change by the Coastal Commission is not required in such an instance.

However, this project purports to **remove** of an existing “B” overlay. Once the “B” overlay is removed, a subsequent subdivision of the parcel is proposed, and then the addition of a stricter “B” overlay onto the newly created parcels to prevent further subdivision is proposed. This effectively allows for a temporary lifting of the “B” overlay to facilitate a subdivision, and attempts to circumvent CIP Section 20.94.042 by then placing a stricter “B” overlay than previously existed on the property. Although the County may have interpreted this an action that is protective of the resources, the resource, open land and environmentally sensitive habitat in this instance, in fact has first been exploited by removal of the “B” overlay without Coastal Commission review and certification, and secondly by allowing a subdivision. Therefore, the project is inconsistent with



County Zoning Ordinance Section 20.94.042 because it impermissibly removes the “B-7” overlay to allow for subdivision without obtaining an LCP amendment. Thus, because the project is not consistent with current zoning, changing the zoning requires an LCP amendment, and based on the history of an LCP amendment being obtained prior to approval of subdivision of the adjoining parcel with identical zoning, a substantial issue is raised with respect to the County Zoning Ordinances, CIP Chapter 20.94.042.

This is not to suggest that merely applying for an amendment to the LCP to reclassify the zoning, after meeting the criteria of CIP Section 20.42.030.G.3, would resolve all of the substantive issues related to this project. If the Board of Supervisors determined that subdivision of this parcel was generally appropriate, substantive issues such as impacts to ESHA, and high erosion hazards must also be addressed. Furthermore, the analysis that allowed for the approval of the 1992 subdivision of the adjoining 8.5-acre parcel is no longer valid because the LCP amendment modifying water policies on which it was based was not ever submitted or certified by the Coastal Commission. The North County Hydrology study has been completed, and in the subsequent 7 years our understanding of the water situation in the region has improved, and a Comprehensive Water Resources Management Plan has been completed. It appears that the overdraft has become even more severe than it was at the time the original regional study was completed, and additionally, the LCP amendment contemplated by the County to address density issues with respect to the limiting factor of water supply was never submitted nor certified. Therefore, analysis that allowed for the subdivision of the 8.5-acre portion of the original parcel to be subdivided into three parcels does not apply to the subdivision of the 17.03-acre portion of the original parcel.

## 2. Water Supply

### A. Appellants' Contentions

The appellants contend that if for some reason a subdivision were potentially appropriate for this parcel, the project on appeal would be inconsistent with the Certified LCP for the following substantive reasons:

- This project lacks a hydrology report and proof of an adequate long-term water supply.
- This project involves non-priority development in an area of limited water.

### B. Local Coastal Program Provisions

The appellants specifically reference the following Land Use Plan (LUP) and Coastal Implementation Plan (CIP) policies regarding water supply (See Exhibit F for complete text of appellants' contentions):

- ***Policy 4.3.5 General Policies 4*** *Where there is limited land, water, or public facilities to support development, coastal-dependent agriculture, recreation, commercial and industrial uses shall have priority over residential and other non-coastal-dependent uses.*
- ***CIP Section 20.144.140.B.3.a Build-Out*** *In the North County Land Use Plan area, a total of*



*2,043 new lots or units may be created after certification of the LUP in June, 1982. This figure represents development at a level of 50% of the build-out remaining at the time of LUP certification. It was calculated by subtracting the number of existing units from the potential build-out (i.e. 7,835 units – 3,750 units = 4,085 units; 4,085 units X 50% = 2,043 units), at the time of LUP certification as provided in LUP Policy 4.3.3. The 50% build-out is permitted as the first phase of new development which limits groundwater use to the safe yield level. Additional development beyond this first phase shall require a Local Coastal Program amendment, pursuant to Appendix 13 of this ordinance, and shall only be permitted after safe yields of groundwater use have been established and water supplies are determined to be available, according to definitive water studies.*

*Between the time of LUP certification (June, 1982) and Coastal Implementation Plan preparation (July, 1987), a total of 168 lots were approved and a total of 119 final building permits were issued. As well, there were a total of 405 vacant residential parcels as of July, 1987. (These figures were calculated through use of County Planning Department and Assessor computer records.) Subtracting these figures from the 2,043 new lots or units provides the remaining build-out that may be permitted after County assumption of coastal development permitting authority, exclusive of one single family dwelling on a vacant lot of record. That remaining build-out figure is 1,351 new lots or units. This figure shall include senior citizen units, caretaker units, multiple family dwellings, employee housing, and lots created through subdivision approved after County assumption of permitting authority, but shall exclude development of a single-family dwelling on a vacant lot of record. (Ref. Policy 2.5.3.A.2 & 4.3.3)*

- ***CIP Section 20.144.070.D.1*** A hydrologic report shall be required for any development which involves intensification of water use... Uses where the water will be used for agricultural operations shall not be exempted from the hydrologic report.

Other relevant policies include:

- ***2.5.1 Key Policy*** The water quality of the North County groundwater aquifers shall be protected and new developments shall be controlled to a level that can be served by identifiable, available, and long-term water supplies. The estuaries and wetlands of North County shall be protected from excessive sedimentation resulting from land use and development practices in the watershed area (Emphasis added).
- ***Policy 2.5.2.3*** New development shall be phased so that the existing water supplies are not committed beyond their safe long term yields. Development levels that generate water demand exceeding safe yield of local aquifers shall only be allowed once additional water supplies area secured.
- ***Policy 2.5.3.A.2*** The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining build out as specified in the LUP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies.



### C. Local Government Action

The County's action (Resolution 02-252, Exhibit E) allows for the subdivision of a 17.03-acre parcel into 6 parcels ranging from 1.59 to 5.0 acres in size. Finding #8 (Exhibit E, Page 8) states that the project is consistent with Section 20.144.070 of the Coastal Implementation Plan. Evidence for this finding states that the parcel is located within Subwatershed No. 29, a Watershed Restoration Area, and thus the project has been conditioned to control site drainage and erosion resulting from future construction of single family dwellings on each lot.

Finding #6 (Exhibit E, Page 8) addresses the issue of density, by stating that the project is consistent with CIP Section 20.144.140.B.3.a. Evidence for this finding states that the project represents lots 825-829 out of a maximum of 1,351 new lots or units allowed to be approved since July 1987.

Additionally, Finding #9 (Exhibit E, Page 9) reiterates the fact that North Monterey County aquifers have a serious overdraft and saltwater intrusion problem. Evidence to support this finding states that Chapter 18.51 establishes a Water Impact Fee for development in the North County area to assist in financing a study of the safe yield of the North County aquifers, and the project has been conditioned to pay "the appropriate financial contribution" to implement the area-wide study.

In addition to findings and evidence, the project was conditioned, among other things, to provide the Water Resources Agency a "water balance analysis describing the pre-development and post-development water use on the property", to submit a drainage report and to obtain a amended water system permit from the Division of Environmental Health.

### D. Substantial Issue Analysis and Conclusion

#### 1) Status of Water in North Monterey County

The overdraft of and saltwater intrusion into aquifers in the North County planning area is of great concern. Prior to the certification of the North County area LUP, in June of 1982, groundwater overdraft in the area was well documented. In 1977 the State Department of Water Resources indicated that a general groundwater overdraft of about 15,500 acre-feet annually existed in the North County area. In 1980 the U.S. Geological Survey confirmed the overdraft of the Aromas Sand Aquifer, the major aquifer in the coastal zone, and estimated an overdraft in the study area of about 1,500 to 8,000 acre-feet. It was evident at the time the North County LUP was being written that continued overdraft in the North County area would lead to increasing saltwater intrusion of the aquifers and lower water tables as well, potentially leading to water shortages. At that time, it was understood that managing the demand for water within the limits of a long-term water supply would be a major challenge for the area, and that additional information was needed to determine the long-term safe yield of the North County aquifers.

Overdraft was clearly recognized as a problem in the 1982 LUP, which describes as evident the increasing saltwater intrusion and lowering of water tables resulting from the continued overdraft in the North County area. The LCP contains policies designed to protect water supply and quality in this planning area, and specifically to control density of development. Provisions were included to reduce



buildout if that seemed necessary once safe yields were determined by further study. The County, in an effort to determine the water supply and quality issues of the area, contracted for the North Monterey County Hydrogeologic Study, Volume I of which was completed in October 1995, and Volume II of which was completed in May of 1996. An extensive portion of the North County planning area is contained in the study area (See Exhibit G). Volume I, *Water Resources* report defined the water supply and water quality issues, and Volume II, *Critical Issues Report and Interim Management Plan* identified the key issues as well as potential interim solutions that could be implemented to start addressing the problems.

Subsequent to the recommendations in Volume II of the Hydrogeologic Study, the County drafted a Water Action Plan for the Hydrogeologic Study Area in 1997 to address the groundwater overdraft and related land disturbance problems in the area (See Exhibit G). The Action Plan included measures to amend the Grading and Erosion Control Ordinances; the Subdivision Ordinance; amendments to the Zoning Ordinance, and Title 15 (Public Services), as well as adoption of a Fallow Land Banking Program to remove certain existing agricultural lands from production.

In January 2002, the MCWRA released a Comprehensive Water Resources Management Plan (CWRMP) to address water supply and quality issues in North Monterey County. The plan recommends following the PVWMA's Basin Management Plan (BMP) to address water supply and water quality issues in the Pajaro, Springfield Terrace and Highlands North regions, and provides several alternatives for the Highlands South and Granite Ridge areas. The Comprehensive Water Resources Management Plan (CWRMP) reported current overdraft of 16,742 acre-feet per year (afy) in 2002<sup>3</sup>. With calculations of overdraft having increased substantially from 1977 to 2002, buildout could have been further restricted to less than 50%, based on the specific water supply policies of the LCP.

However, because the current demand (31,152 afy in 2002) is already much greater than the safe-yield figure (14,410 afy), any added demand is undesirable. Implementation of the LCP over recent decades has reflected increasing awareness of the serious nature of water supply/water quality issues in North Monterey County. Permits issued by the County from 1988 to the present have reflected a progressive shift toward stricter water supply control. Permits issued in the years shortly after LCP approval allowed lot subdivision since they were well within the 50% buildout level allowed. Finally, the county imposed an 18-month urgency ordinance (Ordinance No. 4083) prohibiting new subdivisions and conversion of non-irrigated land to irrigated land in North County effective on August 9, 2000. This ordinance received a 6-month extension (Ordinance No. 4134) on January 22, 2002, however, temporary ordinances are limited to 2 years, and thus the ordinance expired on August 9, 2002.

## 2) Substantial Issue Analysis

It is well documented that the cumulative impacts of development have caused an overdraft of the region's aquifers, threatening future water supplies through saltwater intrusion and a reduction in the water table. Given this tenuous situation, the sustainability of long-term water supplies for new

---

<sup>3</sup> 2002 (Demand of 31,152 afy minus Sustained Yield of 14,410 afy = Overdraft of 16,742 afy). North Monterey County Comprehensive Water Resources Management Plan dated January 2002.



development need to be evaluated very closely. This project is inconsistent with LUP Key Policy 2.5.1, which requires new developments to be controlled to a level that can be served by identifiable, available, and long-term water supplies. Resolution 02-252 contains no evidence of an analysis of a potential long-term water supply for this project, yet finds that North County area aquifers have “a serious overdraft”, “seawater intrusion problems” and “nitrate pollution problems throughout the area”. To mitigate for this project’s potential impacts to the area’s already seriously overdrafted aquifers, they are required to pay a fee to finance a study (completed in 1996) and “management plans relating to the safe yield of the North Monterey County aquifers”. This mitigation is completely inadequate because it does not address the impact of this project- which will add 5 new dwelling units on a water supply already documented as being in serious overdraft. Thus, there is no evidence in the Resolution 02-252 that this proposed development can be served by “identifiable, available, and long term water supplies”. Therefore the project is inconsistent with LUP Key Policy 2.5.1, and the Commission finds that a substantial issue is raised with respect to adequate water supply.

The project is also inconsistent with CIP Section 20.144.070.D.1, which requires a hydrology report for any development that involves intensification of water use. This project can be expected to result in 5 new homes each using from .43-.75 acre-feet of water per year, or an increase of 2.15 to 3.75 acre-feet/year<sup>4</sup>. Finding #8 of Resolution 02-252 (Exhibit E, Page 8) states that the project is consistent with CIP Section 20.144.070 because the “project has been conditioned to control site drainage and erosion” resulting from future construction of homes on the lots. This finding makes no mention of the requirement for a hydrology report for any development that involves intensification of water use, which this project will when an additional 5 residences are built and occupied. Finding #9 on Page 9 of Exhibit E reiterates the serious overdraft of the region’s aquifers, and states that the project mitigates for this project’s potential impacts to the area’s already seriously overdrafted aquifers by paying a fee to finance a study (completed in 1996) and “management plans relating to the safe yield of the North Monterey County aquifers”. As discussed in the preceding paragraph, payment of a fee to fund a completed study is inadequate mitigation. There is no evidence in the record that this proposed development will be served by “identifiable, available, and long term water supplies”. Thus the project is inconsistent with CIP Section 20.144.070.D.1, because no hydrology report was completed for this project, and the Commission finds that a substantial issue is raised with respect to the issue of adequate water supply.

Finally, the project is also inconsistent with LUP Policy 4.3.5.4, which sets priorities for the type of development allowed in areas with limited land, water or public facilities. This policy gives the priority for development in areas with limited water to “coastal-dependent agriculture, recreation, commercial and industrial uses”, and states these uses “shall have priority over residential and other non-coastal-dependent uses”, thus delegating residential subdivisions to the lowest development priority for the North County planning area. Given the existing water shortage in this area of the County, the low priority for this type of development, and the fact that no project-specific hydrology report was prepared, the project as proposed and conditioned is inconsistent with these policies, and Commission finds that a

---

<sup>4</sup> Figures based on those used by Monterey County to estimate water use of single-family homes. The low end of the range represents single-family homes with no potential for a second unit (such as a granny unit) and the high end of the range represents single-family homes with the potential for a second unit on the lot.



substantial issue exists with respect to viable, long-term water supply.

### 3. Environmentally Sensitive Habitat Resources

#### A. Appellants' Contentions

The appellants also contend in part that the project on appeal is inconsistent with the Certified LCP ESHA policies for the following reasons:

- Residential development is not a resource-dependent use.
- Development adjacent to ESHA is not compatible with long-term maintenance of the resource.
- Subdivisions resulting in significant impacts to ESHA are prohibited.
- Clustering of development is required to prevent habitat impacts.
- New residential development must be sited to protect maritime chaparral.

(See Exhibit F for complete text of appellants' contentions).

#### B. Local Coastal Program Provisions

The appellants cite the following LCP policies regulating land use in ESHA:

- **Policy 2.3.2.1** *With the exception of resource dependent uses, all development, including vegetation removal, excavation, grading, filling, and the construction of roads and structures, shall be prohibited in the following environmentally sensitive habitat areas: riparian corridors, wetlands, dunes, sites of known rare and endangered species of plants and animals, rookeries, major roosting and haul-out sites, and other wildlife breeding or nursery areas identified as environmentally sensitive. Resource dependent uses, including nature education and research hunting, fishing and aquaculture, where allowed by the plan, shall be allowed within environmentally sensitive habitats only if such uses will not cause significant disruption of habitat values.*
- **Policy 2.3.2.2** *Land uses adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent habitat impacts, upon habitat values and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the resource.*
- **Policy 2.3.2.3** *New development adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New subdivisions shall be approved only where significant impacts to environmentally sensitive habitats from development of proposed parcels will not occur.*





- **Policy 2.3.2.4** *To protect environmentally sensitive habitats and the high wildlife values associated with large areas of undisturbed habitat, the County shall maintain significant and, where possible, contiguous areas of undisturbed land for low intensity recreation, education, or resource conservation use. To this end, parcels of land totally within sensitive habitat areas shall not be further subdivided. On parcels adjacent to sensitive habitats, or containing sensitive habitats as part of their acreage, development shall be clustered to prevent habitat impacts.*
- **Policy 2.3.3.A.2** *Maritime chaparral is an uncommon, highly localized and variable plant community that has been reduced in North County by residential and agricultural development. Further conversion of maritime chaparral habitat to agricultural uses is highly discouraged. Where new residential development is proposed in chaparral areas, it shall be sited and designed to protect the maximum amount of maritime chaparral. All chaparral on land exceeding 25 percent slope should be left undisturbed to prevent potential erosion impacts as well as to protect the habitat itself.*

The LCP also contains the following relevant policies:

- **Key Policy 2.3.1** *The environmentally sensitive habitats of North County are unique, limited, and fragile resources of statewide significance, important to the enrichment of present and future generations of county residents and visitors; accordingly, they shall be protected, maintained, and, where possible, enhanced and restored*
- **Policy 2.3.2.6** *The County shall ensure the protection of environmentally sensitive habitats through deed restrictions or dedications of permanent conservation easements. Where land divisions or development are proposed in areas containing environmentally sensitive habitats, such restrictions or easements shall be established through the development review process. Where development has already occurred in areas supporting sensitive habitat, property owners should be encouraged to voluntarily establish conservation easements or deed restrictions.*
- **Policy 2.3.2.8** *Where development is permitted in or adjacent to environmentally sensitive habitat areas (consistent with all other resource protection policies), the County, through the development review process, shall restrict the removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc.) to the minimum amount necessary for structural improvements.*
- **CIP Section 20.144.140.B.3.d.1** *Densities of residential subdivisions shall be based upon an evaluation of the site conditions and the development's cumulative impacts. As such, the maximum allowable density based on the evaluation shall be determined pursuant to Section 20.140.070. Factors to be considered include: geologic/flood/fire hazards, slope, vegetation, environmentally sensitive habitats, water quality and availability, erosion, septic tank suitability, adjacent land use compatibility, public services availability, and coastal access and visual resource opportunities and constraints. (Ref. Policy 4.3.6.D.1)*



### C. Local Government Action

Finding #3 (Exhibit E, Page 5) states that the project will have a potential for changes to habitat resources upon which wildlife depends, and thus the project has been conditioned to pay the Environmental Document Fee. Additionally, Finding #4 (See Exhibit E, Pages 6-7) states that the project is consistent with LUP policies designed to protect ESHA. Evidence for this finding states that biological reports were prepared in May of 1996 and May 2001; that all protected habitat shall be restricted as a scenic or conservation easement; that the project has been redesigned to reduce grading and vegetation removal and to cluster the building sites on the parcel; no invasive plants shall be planted on any lot and that the redesigned map minimizes potential impacts to chaparral (See Exhibit D original map and Exhibit C revised map).

### D. Substantial Issue Analysis and Conclusion

The North County area LUP includes maritime chaparral as ESHA, and Key Policy 2.3.1 describes it as unique, limited and a fragile resource of statewide significance, which, accordingly, shall be protected, maintained, and where possible enhanced and restored. Policy 2.3.3.A.2 also describes maritime chaparral as an uncommon plant community in North County that has been reduced by residential and agricultural development. The original biology report prepared for the project describes the majority of the portion of the lot to be subdivided as being in a “largely undisturbed state with natural habitat in abundance”. Additionally, the subsequent biology report, prepared in 2001, describes the site as being over fifty percent covered with central maritime chaparral. Maritime chaparral is found on the steeper slopes on the northeastern portion of the property in addition to the lesser slopes where development is proposed.

Given that maritime chaparral is found in areas proposed for future development, the proposed development is inconsistent with LCP Policies 2.3.2.1 and 2.3.2.2. Policy 2.3.2.1 limits development within environmentally sensitive habitat areas to resource dependent uses, such as nature education and research, and Policy 2.3.2.2 limits land uses adjacent to ESHA to those compatible with long-term maintenance of the resource. For purposes of Policy 2.3.2.2, compatible is defined as only those uses that incorporate all site planning and design features necessary to prevent habitat impacts, and do not establish a precedent for continued land development that could degrade the resource on a cumulative basis. This project is inconsistent with policy 2.3.2.1 because an access road to the proposed residential parcels, and the establishment of building and septic envelopes are non-resource dependent development in ESHA.

This subdivision is also inconsistent with Policy 2.3.2.2 because the future residential use, with its accompanying removal of vegetation, primarily oak woodland, adjacent to ESHA, has not been designed to prevent habitat impacts. The proposed access route from lot 1 to lot 2 requires trimming of 3 manzanitas, and the building and septic envelopes of one lot (Lot #6) contain Pajaro manzanitas that must be trimmed or removed. In fact, the project has been conditioned (Exhibit E, Condition #3, Page 13) such that “all maritime chaparral habitat and tree removal on the parcel must be in accordance with” (Emphasis added) a habitat management plan, although removal of ESHA is not permitted by the LCP. While the impacts to 7 plants in the chaparral community may not seem like a large impact, their stress



and loss are impact enough to be inconsistent because the LCP requires that subdivisions be designed to prevent such impacts. Typically when projects are approved on parcels containing ESHA, not only are they not allowed to intrude into areas containing sensitive habitats, but a buffer zone is established to protect the habitat during construction and subsequent residential use. Additionally, a subdivision by nature establishes a precedent for continued land development due to the residential uses to follow, described in the LUP as one of the main threats to maritime chaparral. Therefore, this development proposed to take place within and adjacent to ESHA is inconsistent with the above policies, and thus raises a substantial issue with respect to protection of ESHA and its related habitat values.

Similarly, Policy 2.3.2.3 allows new subdivisions “only where significant impacts to environmentally sensitive habitats from development of proposed parcels will not occur”. Although the County’s Resolution finds that this project is consistent with this policy, the evidence does not support this finding. The project includes trimming of 3 Pajaro manzanitas and removal of 4 Pajaro manzanitas for an access road and building and septic envelopes, i.e. development that is non-resource dependent and causes impacts to ESHA. Thus, the project as proposed is inconsistent with Policy 2.3.2.3 and therefore raises a substantial issue with respect to protection of ESHA.

LCP Policy 2.3.2.4 requires clustering of development to prevent habitat impacts. Exhibits D (Original Proposal) and C (Revised/Current Proposal) show how the proposed subdivision map was revised to cluster the building lots in an attempt to prevent impacts to ESHA. However, even after revision of the proposal, the project is still inconsistent with Policy 2.3.2.4 because the LCP requires complete prevention of impacts to the habitat. The project is inconsistent with this policy because the revised subdivision map still proposes creation of a lot and an access road that will impact maritime chaparral through trimming of manzanitas for access and removal of manzanitas for a building and septic envelope, thus, the development has not been clustered to prevent habitat impacts. Pajaro manzanitas are a component of maritime chaparral, considered by the LCP to be a limited and fragile resource of statewide significance, and the removal and trimming of such vegetation is inconsistent with the LCP. Therefore, the Commission finds that a substantial issue exists with respect to protection of ESHA.

Additionally, the project is inconsistent with LCP Policy 2.3.3.A.2, which describes residential and agricultural development as a known threat to maritime chaparral and requires new residential development to be sited to protect the maximum amount of chaparral. This policy requires protection of all maritime chaparral on site, as that is the maximum amount that could be protected. This project, which includes the creation of building and septic envelopes that are located adjacent to, and as in Lot 6, within maritime chaparral and access roads that will impact maritime chaparral, is inconsistent with the protection of all maritime chaparral on the site. Additionally, the revised biology report notes that Pajaro manzanitas, identified as a Federal Species of Special Concern and a rare and threatened plant by the California Native Plant Society, will be trimmed (3) and removed (4) to accommodate this project on the parcel. Therefore, the project is inconsistent with Policy 2.3.3.A.2 and raises a substantial issue with respect to protection of ESHA in the form of maritime chaparral.

In conclusion, based on the evidence, the County’s action is indeed in conflict with the LCP policies designed to protect ESHA, and therefore raise a substantial issue.



## 4. High Erosion Hazard Areas

### A. Appellants' Contentions

The appellants contend in part that the project on appeal is inconsistent with the Certified LCP policies designed to reduce hazards for the following reasons:

- Determination regarding critical erosion shall be made prior to considering an application complete.
- Subdivisions must submit a soils analysis sufficient to determine what areas of the property are Critical or Non-Critical Erosion Areas.
- The project cannot be determined to be in compliance with Policy 2.5.3.5.a.

### B. Local Coastal Program Provisions

The appellants cite the following Land Use Plan and Coastal Implementation Plan policies:

- ***CIP Section 20.144.070.A.1*** For all proposed development, a determination shall be made by the project planner as to which portions of the parcel are in Critical and Non-Critical Erosion Areas. The determination shall be made prior to the application being determined complete...
- ***CIP Section 20.144.070.A.3*** If a project involves substantial development, such as a subdivision, or where the soil types or development location in relation to the soil types, cannot be accurately determined by the planner, the applicant shall be required to provide a soils analysis. The analysis shall be required and submitted prior to the application being determined complete. The analysis shall consist of a soils map prepared by a soils engineer which delineates the following information: contours, areas over 25% in slope, soil types, and soils with K-Factors exceeding 0.4. This information shall be used as the basis for the planner's determination of Critical and Non-Critical Erosion Areas.
- ***Policy 2.5.3.C.5.a*** Maximum permissible densities for the various areas of the plan are shown on the land use plan map and in Section 4.3.1 of the text and range from .10 acres per residence in the High Density Residential areas to 5 acres per residence in the Rural Residential areas. These densities are maximum that may be approved under ideal conditions where all resource considerations of the plan can be fully met. In order to minimize erosion and consequent sedimentation of Elkhorn and Moro Cojo Sloughs, reductions in maximum permissible densities shall be made as follows:
  - a. In areas designated for Rural and Low Density Residential development:
    - Densities shall be reduced as necessary in order to site all development in Non-Critical Erosion Areas and to maintain cumulative development within the LDT for the subwatershed.



*-Existing parcels containing no land suitable for development within the Non-Critical Erosion classification shall be limited to a single residence or to the existing development on the parcel or if there is none, a single residence. Division of the parcel shall not be permitted that creates an additional vacant parcel(s) intended for development.*

### C. Local Government Action

The County, in Finding #8, finds the project consistent with CIP Section 20.144.070 (Exhibit E, Page 8), which includes the water resources development standards. The evidence for this finding states that the parcel is located in Subwatershed No. 29, a Watershed Restoration Area, and further states that the project has been conditioned to control site drainage and erosion. This condition of approval is intended to control erosion resulting from construction of the subsequent single-family dwellings.

Finding #11(Exhibit E, Page 9) states that the request to develop on slopes greater than 25% is consistent with CIP Section 20.144.070.E.2.a because “no other alternative exists which would allow development to occur on slopes of less than 25%”. Evidence for this finding points to a slope analysis map prepared by Goetz Land Surveyors showing all access points to the property from Paradise Rd. on slopes greater than 25%.

### D. Substantial Issue Analysis and Conclusion

The Initial Study and Soils report describe the project area as having steep slopes covered with highly erodible soils, composed primarily of Aromas sands and colluvium. The combination of this soil type and the steep slopes creates a high erosion hazard potential in many areas of the North County planning area, particularly when vegetation is removed or disturbed. Coupled with the parcel’s hazardous soil conditions, is the project’s proximity to Elkhorn Slough. Located roughly 2 miles from the project location, is one of the largest and most productive wetlands systems on the central coast. Because of the documented water shortage, and the threat of sedimentation to surface water quality, the LCP contains policies to direct development to Non-Critical Erosion Areas.

The project is inconsistent with CIP Section 20.144.070.A.1, which requires a determination of Critical Erosion Areas prior to the application being deemed complete, because no such determination was made. Additionally, this project is inconsistent with CIP Section 20.144.070.A.3, which specifically states that applicants are required to submit a soils analysis for subdivisions in the North County planning area. A slope analysis map was prepared by Goetz Land Surveyors for the site, however, this map is not sufficient to determine what portions of the property are in Critical Erosion Areas because it does not delineate contours, areas over 25% slopes, soil types, and soils with K-Factors in excess of 0.4, as required by 20.144.070.A.3.

This determination is critical to establish compliance with LUP Policy 2.5.3.C.5.a, which requires densities of Low Density Residential areas to be reduced as necessary to site all development in Non-Critical Erosion Areas. This policy further limits parcels with no land suitable for development within the Non-Critical Erosion classification to a single residence or to the existing development on the parcel, and prohibits division of a parcel that creates an additional vacant parcel in the Critical Erosion Area.



Therefore this project is inconsistent with CIP Sections 20.144.070.A.1 and 20.144.070.A.3 because areas of Critical versus Non-Critical Erosion were not delineated properly to determine compliance with Policy 2.5.3.C.5.a, and the Commission finds that a substantial issue is raised.

Based on the Critical Erosion Areas post cert map (Exhibit H), which is not of a sufficient scale to determine accurately, at least a portion of the property appears to be located within a Critical Erosion Area. Although the project was reviewed and approved without a proper determination of Critical Erosion Areas, if such areas are determined to exist on the property, the property should then be evaluated to determine if subdivision of the lot complies with Policy 2.5.3.C.5.a. Therefore, because of the project's inconsistency with CIP Sections 20.144.070.A.1 and 20.144.070.A.3, and the likelihood that it does contain Critical Erosion Areas, this project rises to the level of substantial issue with respect to Critical Erosion Areas.

Given the potential for this project to include or be located entirely within a Critical Erosion Area, a more in-depth review of its erosion hazard potential is needed to evaluate the project's consistency with Policy 2.5.3.C.5.a. A better, site-specific map clearly delineating Critical Erosion Areas should be produced, as well as being addressed in a soils evaluation report. If such a review concludes that the parcel is entirely within or contains Critical Erosion Areas, the LCP requires the consideration of additional policies designed to protect the resource. Therefore, the Commission finds that the appeal raises a substantial issue with respect to protection of water quality and reduction of geologic hazards.

## C. Substantial Issue Analysis- Conclusion

In conclusion, the appeal raises a substantial issue in terms of compliance with the LCP, procedurally with respect to the current zoning and re-zoning without an LCP amendment, and substantively, with respect to water availability, environmentally sensitive habitat, and erosion issues. The development approved by Monterey County, Board of Supervisors Resolution #02-252, does not conform to LCP policies designed to limit development to those areas able to support it, and policies to protect water availability and quality, environmentally sensitive resources, and to prevent hazards from erosion of the project site as required by the Monterey County Certified Local Coastal Program.

## D. De Novo Coastal Permit Findings

The applicant proposes to remove a protective "B-7" overlay from a 17.03-acre property to allow for the subdivision of the parcel into 6 parcels, grading an access road, water facilities (5 individual wells), development on slopes greater than 25%, and removal of 68 coast live oaks. After the subdivision and related development has taken place, the protective "B-7" overlay will be replaced with a more restrictive "B-6" overlay, which prohibits further subdivision of the property. As discussed in the Substantial Issue findings above, **directly incorporated into these *de novo* findings by reference**, this project is inconsistent with the Monterey County LCP and cannot be approved.



First, as the referenced findings show, the proposed project is inconsistent with the current zoning classification. The property is currently zoned Low Density Residential (LDR)-B-7(CZ)” and the “B-7” overlay prohibits subdivisions. Properties able to demonstrate that they have met minimum requirements with respect to water supply, drainage, sewage disposal, parcel size and design, and traffic circulation for the parcel may be reclassified to the basic zoning district, in this case Low Density Residential, that does permit subdivision. Setting aside the issue of meeting the minimum requirements with respect to the above limiting factors, Section 20.94.042 limits zoning changes that the County can undertake without certification by the California Coastal Commission. The County’s action of removing the “B-7” overlay from this property to facilitate a subdivision and subsequently placing a different “B” overlay on the property is clearly inconsistent with this Section, which limits such unilateral reclassifications to adding any “B” overlay zoning designation for the explicit purpose of preserving or enhancing coastal resources. As the removal of the “B-7” overlay is necessary to subdivide the property, and subdivisions in general are not considered to result in the preservation or enhancement of coastal resources, and the County findings offer no support to this requirement, this project is inconsistent with the LCP and should be denied as presented and conditioned.

Additionally, even if the requisite LCP amendment was applied for to allow rezoning of this parcel, the allowable density of the subdivision must be in compliance with CIP Section 20.144.140.B.3.d.1, which requires density to be based on an evaluation of site conditions and cumulative impacts. As identified in the above findings, the approval of a 6-lot subdivision is inconsistent with this requirement because the density exceeds available water supply, it will have adverse impacts on ESHA, and because it will likely contribute to degradation of water quality through development in Critical Erosion Areas.

Second, the above findings show that the project is located in an area of severe groundwater overdraft, saltwater intrusion, and pollution from nitrates. The findings establish that no site-specific hydrology report was prepared for the project, as required by CIP Section 20.144.070.D.1, to prove that the project has an adequate, sustainable long-term water supply. Additionally, the project consists of a low priority land use for development in an area with a limited water supply, conflicting with Policy 4.3.5.4. Given that the project is a low priority for development and located in an area with a limited water supply, that the region has proven groundwater overdraft and potential shortages, and that no hydrology report has been submitted to prove that the new potential residences will have an adequate long-term water supply, this project is inconsistent with the LCP and must be denied.

Third, the above findings also show that the project area contains a substantial amount of maritime chaparral, considered to be ESHA by the LCP. The applicant proposes a non-resource dependent (residential) development in ESHA, and has not avoided and minimized damage to the chaparral areas. Nor does the project provide for the maximum amount of protection of maritime chaparral on site through the use of conservation easements. Therefore, this development is inconsistent with LCP policies 2.3.2.1, 2.3.2.2, 2.3.2.3, 2.3.2.4 and 2.3.3.A.2 which respectively require development in ESHA to be resource dependent; land adjacent to ESHA to be compatible with its long term maintenance and to not establish a precedent for continued land development; subdivisions to be allowed only where they do not impact ESHA; require development to be clustered to prevent habitat impacts, and to site and design development to protect the maximum amount of maritime chaparral on site. Thus, because of the



project's inconsistencies with LCP policies designed to protect ESHA, the project must be denied as proposed and conditioned.

Additionally, the project is inconsistent with three other LCP policies designed to protect ESHA that were not cited by the appellants. Key Policy 2.3.1 requires protection, maintenance and enhancement and restoration of environmentally sensitive habitat areas. The proposed project does not protect all ESHA on site, and includes removal of maritime chaparral for development envelopes. In fact, the project has been conditioned (Exhibit E, Condition #9, Page 14) to “assure that except for approved structures and appurtenant uses (roads, driveways and septic systems)” development is not located within the maritime chaparral habitat, directly establishing that approved development on site will remove ESHA. Similarly, Policy 2.3.2.8 requires permitted development that is consistent with all other resource protection policies to minimize vegetation removal and land disturbance to the minimum amount necessary for structural improvements. This project is inconsistent because even if it were consistent with all other resource protection policies, the project has not been designed and sited to minimize the removal of indigenous vegetation, such as maritime chaparral and coast live oaks. Furthermore, the project is inconsistent with Policy 2.3.2.6 because it does not include the protection of ESHA through a deed restriction or conservation easement. Therefore, because this project does not protect ESHA, it is not consistent with all other resource protection policies nor minimize vegetation removal, and it does not include a conservation easement over all ESHA on site, it is also inconsistent with LCP ESHA protection policies and thus must be denied as presented.

## 1. High Erosion Hazard Areas

The above findings show that although a Critical Erosion Area determination has not been made by a soils engineer, the property does appear to be located within a Critical Erosion Area based on a Commission post-certification map of such areas. Additionally, because the project site is located within a Watershed Restoration Area, CIP Section 20.144.070.F.1 applies and requires the project to meet policies designed to direct development away from Critical Erosion Areas. Because of the hazardous nature of the Critical Erosion Area, certain development restrictions are detailed by the LCP.

### A. Local Coastal Program Provisions

The appellants raised the issue of high erosion hazard with respect to this project, and contended that the determination of whether or not the project is in a Critical Erosion Area was not made. However, not all applicable policies were raised in the appeal, and the following policies are also relevant to this project:

- ***Policy 2.5.3.C.2.a*** *In order to ensure the appropriate siting and density for new development, and to monitor and control the amount of land disturbance in relation to the LDT for each subwatershed, all new development in the watershed of Elkhorn and Moro Cojo Sloughs, including the conversion of land to commercial cultivated uses, shall be regulated by permit and shall be consistent with the policies that follow. The permit application shall contain a full description of the physical features of the parcel, with supporting maps delineating areas of the parcel having 0-10 percent slope, 10-25 percent slope and areas in excess of 25*





*percent slope. The Critical and Non-Critical Erosion Areas within the parcel shall be indicated. Vegetated areas shall be clearly marked and hydrologic features shall be shown. Projected land disturbance for the project shall be tabulated according to the procedures set forth in Appendix A of this plan. (Appendix A includes all technical data).*

- ***Policy 2.5.3.C.3.a*** *Where the parcel under consideration contains land in both Critical and Non-Critical Erosion categories, all new development, including roads, shall be sited on Non-Critical Erosion lands.*
- ***CIP Section 20.144.070.F.1*** *Each development proposal determined to be within a Watershed Restoration Area, either at the time the application is reviewed or at the time the LDT Evaluation is completed, will be subject to the “General Development Standards: of Section 20.144.070.E as well as “Watershed Restoration Area Development Standards” (Emphasis added).*
- ***CIP Section 20.144.070.E.2*** *Development may be located on Critical Erosion Areas only under the following circumstances: a) There are no alternatives to development on slopes in excess of 25%, or the proposed development is preferable as it better conforms to other resource protection standards of this ordinance, such as by reducing grading, tree removal, or impacts to an environmentally sensitive habitat... b) The proposed development is located in a “HDR” (High Density Residential), “MDR” (Medium Density Residential), “LI” (Light Industrial), or “HI” (Heavy Industrial) zoning district, upon approval of an Erosion Control Plan prepared according to the requirements of Section 20.144.070.C.*
- ***CIP Section 20.144.070.E.4*** *Structural development shall be clustered on the portions of the parcel with soils of the lowest erosion hazard potential...*
- ***CIP Section 20.144.070.E.7*** *New development shall be required to minimize removal of existing vegetative cover and natural vegetation on the parcel. The project shall be modified for siting, location and grading where such modifications will result in less vegetation removal...*
- ***CIP Section 20.144.070.E.8*** *Where development is proposed on parcels containing land in Critical and Non-critical Erosion Areas, all land in the Critical Erosion Areas shall be placed in Conservation Easement as a condition of project approval to be completed prior to issuance of building or grading permits...*
- ***CIP Section 20.144.070.E.11*** *Development shall not be permitted if it has been determined, through preparation of a hydrologic report, or other resource information, that:*
  - a) the development will have adverse impacts to local agricultural water supplies, such as degrading water quantity or quality; and,*
  - b) there are no project alternatives and/or mitigation measures available that will reduce the development’s water use to a level at which it will not exceed or adversely impact the safe, long-term yield of the local aquifer.*

*As such, each hydrologic report shall be reviewed by the Flood Control District and*



*Health Department, pursuant to Section 20.144.070.D.4. Department review shall include an on-going monitoring of cumulative impacts of development on groundwater resources through review of hydrologic reports previously prepared for other development projects in the area. (Ref. Policy2.5.2.3)*

- **CIP Section 20.144.070.E.19** *The densities specified by any particular zoning district are maximum allowable densities that may be approved where all resource protection policies of the North County Land Use Plan and standards of this ordinance can be fully met. A parcel's maximum allowable density, as provided by zoning, shall be reduced as follows:*

*a) In "RDR" (Rural Density Residential) and "LDR" (Low Density Residential) zoning districts:*

*1) Densities shall be reduced as necessary in order to site all development in Non-Critical Erosion Areas and to maintain cumulative development within the Land Disturbance Target for the subwatershed.*

*2) Existing parcels containing no land suitable for development within Non-Critical Erosion Areas shall be limited to a single residence or to the existing development on the parcel, or if there is neither, a single residence. Division of such parcels shall not be permitted if the subdivision will create an additional vacant parcel(s) upon which building could take place.*

## **B. Issue Analysis and Conclusion**

As stated in Finding #4 above, the project is located both within an area of highly erodible soils, exacerbated by removal or disturbance of vegetation, and within a Watershed Restoration Area. As such, the project is required by CIP Section 20.144.070.F.1 to be subject to the General Development Standards of CIP Section 20.144.070.E- which include subsections E.1 through E.19, and regulate development in areas located within Critical Erosion Areas. Although the County did not adequately evaluate this project application for completeness as required by CIP Sections 20.144.070.A.1 and A.3 (to determine if the parcel is located within a Critical Erosion Area), it is of no great consequence because the project is located within a Watershed Restoration Area, and the Critical Erosion Area policies still apply to the project as stipulated by CIP Section 20.144.070.F.1.

Because of these inconsistencies with the LCP, required modifications to the project are numerous and substantial. In this instance, it would be more practical for the applicant to submit a redesigned project to the County, consistent with the LCP requirements, than it would be for the Commission to approve the project subject to the many conditions that would require substantial redesign and review by Commission staff through the condition compliance review process.

## **Alternatives**

The only feasible alternatives to subdividing this property into 6 lots are to not allow subdivision of the lot or to allow a smaller subdivision based on a proper cumulative impacts assessment. The lot already contains a 1,072 square foot single-family home, a 1,200 sf shed, a 300 sf detached garage, and an additional 160 sf storage unit; continued use of the existing house is a viable economic use that avoids



additional impacts to water supply, ESHA, and water quality consistent with LCP requirements. Although not used for farming, because the parcel contains an existing house and outbuildings the owner of this parcel already has an established economic use of the property, thus takings provisions do not apply. A proposal including a smaller number of lots may be another alternative to this project based on an adequate assessment of water supply, impacts to ESHA and density based on the parcel location within and subject to Critical Erosion Area policies. The density of the project would have to be calculated based on such evaluations, and the project would have to be designed to completely avoid impacts to ESHA and to protect all habitat through a deed restriction or conservation easement, as required by the LCP.

### **Conclusion**

This analysis has revealed numerous fundamental inconsistencies with Monterey County LCP. The project as presented does not conform to the current zoning of the property, as it requires an LCP amendment that was not properly obtained. It is also inconsistent with LCP policies designed to protect water supply in the region, or those requiring the protection and maintenance of Environmentally Sensitive Habitat areas and the protection of water quality through a reduction in erosion. Therefore, because the proposed subdivision project is not consistent with the parcel's current zoning, it allows non-resource dependent development in ESHA, will increase water demand and has no proven long-term water source, and has not considered the policies regulating development in Critical Erosion Areas, it is inconsistent with LCP policies designed to protect the resources found at the project site, and must be denied.

## **E. California Environmental Quality Act (CEQA)**

Section 13096 of the Commission's administrative Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA.

Section 15042 of the CEQA Guidelines provides that "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment if the project were approved as proposed." The CEQA provides that its requirements do not apply to an exercise of a governmental body's regulatory authority in the manner described by section 15042. Public Resources Code Section 21080 outlines the application of CEQA to discretionary approvals of projects. Section 21080(b)(5) of the CEQA states that the requirements of the CEQA shall not apply to "projects which a public agency rejects or disapproves." Therefore in this instance CEQA requirements do not apply.

